

### REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed November 9, 2009. At the time of the Final Office Action, Claims 14-31 were pending in this Application. Claims 14-29 and 31 were rejected. Claims 1-13 and 30 were previously cancelled without prejudice or disclaimer. Independent Claims 14, 28 and 29 are herein amended. Applicants respectfully request reconsideration and favorable action in this case.

#### **Rejections under 35 U.S.C. §103**

Claims 14-15, 19-21, 23, 25 and 28-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0057663 by Lim ("*Lim*") in view of U.S. Patent No. 6,684,081 issued to Sarkkinen et al. ("*Sarkkinen*").

Claims 16-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Lim* in view of U.S. Patent No. 6,771,639 issued to Mark J. Holden ("*Holden*").

Claims 22, 24 and 26-27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Lim* in view of well-known prior art.

Applicants respectfully submit that the claims, as amended, are not obvious in view of *Lim* and *Sarkkinen*.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Applicants respectfully submit that *Lim* and *Sarkkinen*, alone or in combination, do not teach all limitations of Applicants' amended claims. For example, amended independent Claim 14 recites:

the form of the user data messages announced by the at least one planning message being used by each subscriber device to ***determine whether or not that subscriber device is technically capable of processing the user data messages, and to select whether or not to receive the user data messages based on such determination.***

Amended independent Claims 28 and 29 recite similar limitations.

*Lim* and *Sarkkinen* fail to teach these limitations. The Examiner acknowledges that *Lim* fails to teach the user data messages are transmitted subsequently to and separately from the at least one planning message, such that transmission of the at least one planning message is completed before beginning the transmission of the user data messages; and wherein the form of the user data messages announced by the at least one planning message includes at least one of a type of content of the user data messages and a coding of the user data messages. (Office Action, pages 2-3). However, the Examiner argues that “*Sarkkinen et al* discloses a communication system wherein both planning message and data are transmitted separately in similar way as recited above. (See *Sarkkinen*'s col. 2 lines 49-54, lines 1-46, col. 3 lines 32-51, col. 4 lines 33-39, 49-53, 60-67, col. 5 lines 1-14).” (Office Action, page 3).

However, even assuming *Sarkkinen* does teach transmission of planning messages and user data messages as alleged by the Examiner, *Sarkkinen*'s “planning messages” do not include information used by a subscriber devices to “determine whether or not that subscriber device is technically capable of processing the user data messages, and to select whether or not to receive the user data messages based on such determination.”

*Sarkkinen* teaches a two phase process for sending multicast or restricted broadcast services to mobile subscribers:

- Phase 1. A service registration phase during which subscribers agree with a service provider or operator to receive multicast or restricted broadcast services.
- Phase 2. A multicast joining or subscription phase during which the subscribers indicate a willingness to the service provider to receive the multicast or restricted broadcast services in order to obtain currently defined service configuration parameters of the multicast or restricted broadcast services.

(*Sarkkinen*, col. 2, lines 1-47).

There is no teaching that either these two phases includes sending planning messages from which a subscriber device *determines whether or not the subscriber device is technically capable of processing later-sent multicast messages*, and *selects whether or not to receive the multicast messages based on the determination of capability*. There is simply no mention of the subscriber device determining the technical capability for receiving multicast messages based on planning messages sent to the subscriber device. Thus, neither *Lim* nor *Sarkkinen* teaches these limitations of amended independent Claims 14, 28, and 29.

For at least these reasons, amended independent Claims 14, 28, and 29 are allowable over *Lim* and *Sarkkinen*. Accordingly, Applicants respectfully request reconsideration and allowance of amended Claims 14, 28, and 29, as well as all claims that depend therefrom.

**CONCLUSION**

Applicants have made an earnest effort to place this ease in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.457.2030.

Respectfully submitted,  
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